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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/607,646
Filing Date: June 27, 2003
Appellant(s): SWINDELL ET AL.

Guyton P. Swindell et al
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/12/08 appealing from the Final rejection mailed 06/19/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,696,864	Smith et al	12-1997
5,867,624	Forrester et al	02-1999

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(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims and are expressly stated in the Final Rejection (filed on June 19, 2007). No new grounds of rejection are being presented and the following grounds of rejection are hereby repeated below for the convenience of the Appellants and the BPAI:

Claim Rejections - 35 USC § 103

A. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

B. Claims 6-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al (US 5,696,864) in view of Forrester et al (US 5,867,624).

Regarding claim 6, Smith et al teach a method for use in tapping into an above ground communications transmission cable having multiple fiber optic strands comprising:

- applying a clamp system (Fig. 1, items 20, 21, 22 & 24) to a first portion of a first fiber optic cable (Fig. 1, 18), except for having a self-supporting fiber optic cable;
- using a bail (Fig. 1, 12) to connect the clamp to a support structure (Fig. 1, 14);
- connecting a splice closure (Fig. 1, 10) to the bail;
- connecting an aerial splicing platform (Fig. 7, 66) to the bail (Fig. 7, 12);

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- splicing (Fig. 7, 122 & C; col. 5, lines 42-49; col. 6, lines 1-13) a second portion of the first fiber optic cable to a second fiber optic cable (Fig. 1, 112) in the splice closure;
- wherein said fiber optic cable does not pass through said bail.

Forrester et al teach a method of storing surplus fiber optic cable above ground by using an all-dielectric, self-supporting (ADSS) fiber optic cable (Col. 2, lines 36 & 37) wherein said fiber optic cable does not pass through the portion of bails (Fig. 9, items 20 & 22), in order to have the advantage of strength and application in close proximity to electrical power line, due to its strong, dielectric sheath (Col. 1, lines 7-11).

It would be obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Smith et al by applying the self-supporting (ADSS) optical cable, as taught by Forrester et al, in order to have the advantage of strength, costs saving on long cable installation and application in close proximity to electrical power line, due to its strong, dielectric sheath.

Regarding claim 7, Smith et al in view of Forrester et teach the claimed invention including the self-supporting (ADSS) fiber optic cable (Forrester et al; col. 2, lines 36 & 37) and the teaching by Smith et al that the splice closure (Fig. 1, 10) is positioned away from the clamp (Fig. 1, 21 & 22) to maintain a minimum bend radius in the first fiber optic cable (Fig. 1, 110).

It would be obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Smith et al by applying the self-supporting (ADSS) optical cable, as taught by Forrester et al, in order to have the advantage of strength, costs saving on long cable installation and application in close proximity to electrical power line, due to its strong, dielectric sheath.

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Regarding claim 8, Forrester et al teach an all-dielectric, self-supporting (ADSS) fiber optic cable (Col. 2, lines 36 & 37).

Regarding claim 9, Smith et al teach a method for use in tapping into an above ground communications transmission cable having multiple fiber optic strands including the in-line and butt splice (Fig. 7, C) of the optical cable strands (Fig. 7, 122) without severing the first fiber optic cable (Fig. 7, only 122 & C; col. 5, lines 42-49; col. 6, lines 1-13), which reads on applicants' claimed invention.

Forrester et al teach the process of working on aerial fiber optic cable, including the in-line and butt splice (Col. 7, lines 9-13) of the ADSS optical cable (Fig. 9, 10) in order to have the advantage of strength and application in close proximity to electrical power line (Col. 1, lines 7-11).

It would be obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Smith et al by applying the working of ADSS optical cable, as taught by Forrester et al, in order to have the advantage of strength, costs saving on long cable installation and application in close proximity to electrical power line, due to its strong, dielectric sheath.

Regarding claim 10, Smith et al teach that the splice points (Fig. 7, 122 & C; col. 5, lines 42-49; col. 6, lines 1-13) or slack coils are not predetermined prior to applying the clamp (Fig. 1, 21 & 22) to a first portion of a first fiber optic cable and using a bail (Fig. 1, 12) to connect the clamp to a support structure (Fig. 1, 14) as it further requires a splice/table stray (Fig. 6, 66; col. 4, lines 21-27) hanging on the bail to work on the optical cable.

Regarding claim 12, Smith et al teach a method for use in tapping into an above ground communications transmission cable having multiple fiber optic strands comprising:

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- applying a clamp (Fig. 1, 21 & 22) to a first portion of a first fiber optic cable (Fig. 1, 18), except for having a self-supporting fiber optic cable;
- using a bail (Fig. 1, 12) to connect the clamp to a support structure (Fig. 1, 14);
- connecting a splice closure (Fig. 1, 10) to the bail;
- connecting an aerial splicing platform (Fig. 7, 66) to the bail (Fig. 7, 12);
- splicing (Fig. 7, 122 & C; col. 5, lines 42-49; col. 6, lines 1-13) a second portion of the first fiber optic cable to a second fiber optic cable (Fig. 1, 112) in the splice closure;
- wherein said bail is not connected to said first fiber optic cable.

Forrester et al teach a method of storing surplus fiber optic cable above ground by using an all-dielectric, self-supporting (ADSS) fiber optic cable (Fig. 9, 10; col. 2, lines 36 & 37) wherein the portions of bail (Fig. 9, items 20 & 22) are not connected to said ADSS fiber optic cable, in order to have the advantage of strength and application in close proximity to electrical power line, due to its strong, dielectric sheath (Col. 1, lines 7-11).

It would be obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Smith et al by applying the self-supporting (ADSS) optical cable, as taught by Forrester et al, in order to have the advantage of strength, costs saving on long cable installation and application in close proximity to electrical power line, due to its strong, dielectric sheath.

C. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al in view of Forrester et al and further view of Applicants' Admitted Prior Art, hereinafter AAPA.

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Smith et al in view of Forrester et al teach a method for use in tapping into an above ground communications transmission cable having multiple fiber optic strands, which reads on applicants' claimed invention; except for having the splicing method as a taut sheath splicing method.

The AAPA teaches the technique of "taut sheath splicing" on steel cable supporting fiber optic cables extruded together into a 'figure 8' form in order to enable an user to splice in the drop cable without predetermining splice points or slack coils (AAPA, page 1, paragraph 0003) and to drop service to specific customers.

It would be obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Smith et al in view of Forrester et al, by applying the "taut sheath splicing", as taught by AAPA, in order to facilitate the fiber optic cable's drop service to specific customers.

(10) Response to Arguments

A. Rejection of claims 6-10 and 12 under 103(a) as being unpatentable over Smith et al in view of Forrester et al (Pages 10 and 11):

Appellants assert that Smith et al in view of Forrester et al do not teach or suggest the limitation of "applying a clamp to a first portion of a self-supporting first fiber optic cable" (Claims 6 and 12, line 2; Page 10 of the Brief). In response to the remarks, the Examiner provides the counter-arguments as below:

In the arguments, Appellants do not specify the exact clamp applied in the invention, such as the items 12, 28 and 30 of Figure 1 disclosed as clamp in the specification and recited in

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claims 6 and 12 (Remarks, page 10, last paragraph) to clarify the claimed invention, while attempting to call it the “wedge clamp” later in the remarks and not in the claims. From these claimed language perspectives and in addition to the view with respect to the recent Supreme Court's decision in the *KSR* case, 72 FR 57526, wherein the guidelines seven possible rationales are laid out for an obviousness rejection: "(A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) 'Obvious to try'--choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention." *Id.* at 57529, the rejection of claims 6 and 12 under 103(a) is applied, especially with the rationale (G).

Smith et al teach *inter alia* that limitation step of “applying a clamp system (Fig. 1, items 20, 21, 22 & 24) to a first portion of a first fiber optic cable (Fig. 1, 18), except for having a self-supporting fiber optic cable” while Forrester et al teach a method of storing surplus fiber optic cable above ground by using an all-dielectric, self-supporting (ADSS) fiber optic cable (Col. 2, lines 36 & 37), in order to have the advantage of strength and application in close proximity to electrical power line, due to its strong, dielectric sheath (Col. 1, lines 7-11).

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It would be obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Smith et al by applying the self-supporting (ADSS) optical cable, as taught by Forrester et al, in order to have the advantage of strength, costs saving on long cable installation and application in close proximity to electrical power line, due to its strong, dielectric sheath.

Furthermore, if the Appellants insist to assert that the claimed language “clamp” is the “wedge clamp” by reading the specification into the claims, Smith et al still do teach that limitation as the clamping device (Fig. 1, items 22 & 24) between the strand (16) and fiber-optic cable (18).

Moreover, Appellants assert that it is not obvious to eliminate the strand 12 of Figure 1 of Smith et al, used to support the cable in the 103(a) rejection (Remarks, page 11, last paragraph). For the record, the examiner never suggests the total elimination of the strand but rather suggests the application of the strand, as taught by Forrester et al in Figure 5, item 22, near the pole. It would be obvious to modify the method of Smith et al, which uses old technology of separated fiber cable (Fig. 1, 18) coupled with strand cable (16) as reinforcement along all the communication lines from the Central Office (CO) to every residential customers, with the application of new ADSS cable from Forrester et al, where one single type of fiber-optic cable with built-in reinforcement is needed along all the communication lines, with a short strand needed only near each pole. Therefore, it's just a matter of applying new technology to the old one in order to save costs from installing thousand of miles of unnecessary, additional strand cable along all the communication lines while avoiding the “polluting view effect” to the environment with many cables tangled high up in the sky.

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B. Rejection of claim 11 under 103(a) as being unpatentable over Smith et al in view of Forrester et al and further view of Applicants' Admitted Prior Art, hereinafter AAPA (Page 12):

Appellants cite the same arguments with respect to the limitation of "applying a clamp to a first portion of a self-supporting first fiber optic cable", therefore the responses by the Examiner herein for substantially the same reasons as provided above, are incorporated herein and made a part hereof; and the rejection of Claim 7-10 are maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Phan Thiem/
Primary Examiner, Art Unit 3729
November 19, 2008

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